

Kelly E. Nokes, *admitted pro hac vice*
Montana Bar No. 39465862
Western Environmental Law Center
208 Paseo del Pueblo Sur, No. 602
Taos, New Mexico 87571
Tel: 575-613-8051
nokes@westernlaw.org

Matthew K. Bishop, *admitted pro hac vice*
Montana Bar No. 9968
Western Environmental Law Center
103 Reeder's Alley
Helena, Montana 59603
Tel: 406-324-8011
bishop@westernlaw.org

Counsel for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

WildEarth Guardians, et al.,

Plaintiffs,

vs.

David Bernhardt, as Secretary of the
Department of the Interior, et al.,

Federal-Defendants.

No. 4:19-CV-00441-CKJ

**STIPULATION AND JOINT
CASE MANAGEMENT PLAN**

In response to this Court's December 18, 2019 request, Plaintiffs and Federal-Defendants ("the Parties"), met and conferred and respectfully submit this Stipulation and Joint Case Management Plan for resolution of this matter and state as follows:

1 1. The Parties agree that this case is a civil action for declaratory and injunctive relief
2 against Federal-Defendants brought under the Endangered Species Act (“ESA”), 16
3 U.S.C. § 1533 *et seq.*, and the Administrative Procedure Act (“APA”), 5 U.S.C. § 706.
4

5 2. The Parties agree that this case can likely be resolved following the lodging of the
6 administrative record (as outlined below) and through briefing on the merits (summary
7 judgment) and without a trial. As such, this matter is exempt from preliminary pretrial
8 statements, discovery plans, and related requirements unless otherwise ordered by the
9 Court.
10

11 3. The Parties agree this case is not suitable for an alternative dispute resolution
12 program such as arbitration, mediation, or judicial settlement conference. The Parties,
13 however, agree to explore settlement in this matter informally, amongst themselves, and
14 have allowed time in the schedule (outlined below) to accommodate such talks.
15

16 4. The Parties have met and conferred and propose the following schedule:
17

- 18 a. Federal-Defendants will compile and lodge an administrative record with
19 this Court on or before March 31, 2020. A complete and accurate copy of
20 the administrative record and index will simultaneously be sent to
21 Plaintiffs’ counsel. The administrative record will be filed in an indexed
22 and searchable electronic format on CDs or USB thumb-drives. After
23 Federal-Defendants lodge the administrative record, the Parties will
24 endeavor to resolve any outstanding issues and disputes regarding the
25 content of the administrative record amongst themselves. Should this effort
26 prove unsuccessful, Plaintiffs will have until May 29, 2020, to file any
27
28

1 motions seeking to complete or objecting to the contents of the
2 administrative record, seeking to supplement the record with extra record
3 documents, seeking to conduct discovery , and/or any combination of such
4 motions. Federal-Defendants reserve the right to oppose any such motion(s)
5 and affirmatively assert their position that discovery is not appropriate in
6 cases such as this.
7

- 8
- 9 b. The filing of any such motion(s) concerning the administrative record will
10 automatically stay briefing on summary judgment pending resolution of
11 any such motions. Within two weeks following an order on any such
12 motion(s), the Parties will submit a new, proposed briefing schedule to this
13 Court that includes specific deadlines for resolving this matter on cross-
14 motions for summary judgment.
15
- 16 c. If no motion(s) concerning the administrative record or seeking to conduct
17 discovery are filed, Plaintiffs shall file a motion for summary judgment and
18 supporting memorandum by July 17, 2020 (limited to 30 pages). Federal-
19 Defendants' response to Plaintiffs' motion for summary judgment and
20 cross-motion for summary judgement and supporting memorandum shall be
21 filed by August 21, 2020 (limited to 30 pages). Plaintiffs' joint response
22 and reply to Federal-Defendants' cross-motion for summary judgment shall
23 be filed by September 25, 2020 (limited to 15 pages). Federal-Defendants'
24 reply to Plaintiffs' motion for summary judgment shall be filed by October
25 23, 2020 (limited to 15 pages).
26
27
28

1 The Parties submit that the above schedule will facilitate the timely, efficient, and
2 economical resolution of this civil action. Accordingly, good cause exists for granting
3 this stipulation and joint motion and adopting the Parties' proposed schedule.
4

5
6 Respectfully submitted this 24th day of January, 2020.

7 /s/ Kelly E. Nokes

8 Kelly E. Nokes

9 *Counsel for Plaintiffs*

10
11 JEAN E. WILLIAMS, Deputy Assistant Attorney General
12 SETH M. BARSKY, Chief
13 MEREDITH L. FLAX, Assistant Section Chief

14 /s/ Davis A. Backer

15 DAVIS A. BACKER

16 Trial Attorney (CO Bar No. 53502)

17 U.S. Department of Justice

18 Environment & Natural Resources Division

19 Wildlife & Marine Resources Section

20 Ben Franklin Station, P.O. Box 7611

21 Washington, DC 20044-7611

22 Tel: (202) 514-5243

23 Fax: (202) 305-0275

24 Email: Davis.backer@usdoj.gov

25 *Counsel for Federal-Defendants*
26
27
28